

AMENDMENTS TO THE DRAWINGS

Attached hereto is one sheet of drawings, sheet 5/6. This sheet, which includes FIGS. 7, 8 and 9, replaces the same drawing sheet originally filed in this application, which also includes FIGS. 7, 8 and 9.

REMARKS

1. An Office Action requiring Applicants to elect a single invention for prosecution on the merits was mailed December 15, 2005. In response to the Election/Restriction Requirement, Applicants submit this Second Preliminary Amendment and Response to Election/Restriction Requirement.

Drawings

2. By the foregoing drawing amendments, original drawings sheet 5/6 has been replaced with the attached drawing sheet 5/6. This drawing sheet placed in acceptable format the figures depicted therein. Entry is respectfully requested.

3. Applicants note that replacement drawings were filed in the First Preliminary Amendment on July 26, 2004. However, a review of the record revealed that drawing sheet 5/6 was inadvertently omitted from the filed papers. Accordingly, the attached drawings sheet replaced the corresponding original drawing sheet.

Claim Amendments

4. Claims 1-32 were originally presented for examination in this application. By the foregoing Amendments, claims 33-40 have been added, claims 1-17, 27 and 28 have been cancelled, and claims 18 and 23 has been amended. Thus, upon entry of this paper, claims 18-26 and 29-40 will be pending in this application. Of these 21 claims, two claims, claims 18 and 29, are independent. These amendments are believed not to introduce new matter and their entry is respectfully requested.

Restriction Requirement

5. The Examiner has required the election of a single invention for prosecution on the merits. The Examiner alleged that the originally filed claims are directed to the following four (4) patentably distinct inventions:

- I.* Claims 1 through 17, drawn to a wire assembly, classified in class 257, subclass 698.
- II.* Claims 18 through 26, drawn to a cochlear prosthesis, classified in class 607, subclass 137.
- III.* Claims 27 through 28, drawn to a method, classified in class 438, subclass 106.
- IV.* Claims 29 through 32, drawn to an implantable medical device, classified in class 607, subclass 57.

Traversal of Restriction Requirement

6. Applicants respectfully traverse the requirement to restrict the claims pending in the present application prior to entry of this paper. “There are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 -§ 806.05(i)); and (B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) -§ 806.04(i), § 808.01(a), and § 808.02).” (*See*, MPEP § 803.) Applicants respectfully assert that, for at least the reasons set out below, the above restriction fails to satisfy the above criteria, and should be withdrawn.

The Examiner Has Failed To Contend That The Claims Are Directed To Independent Or Distinct Inventions

7. As explained in the MPEP: “Every requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why the inventions *as claimed* are either independent or distinct; ...” (*See*, MPEP § 808; emphasis in original.) “The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.” (*See*, MPEP § 816.)

8. Applicants assert that no such reasoning has been provided to support the outstanding Restriction Requirement regarding Groups II and IV. In fact, in the

current Office Action, the Examiner has failed to provided even the noted “mere statement of conclusion” by identifying only the claims associated with each alleged invention. No additional information is provided beyond the standard language dictated by the MPEP. The MPEP provides examples of the type of reasoning that should be included to support a restriction requirement. (*See*, for example, MPEP § 816.) Because the outstanding Restriction lacks any such support, Applicants assert the Restriction of claims 18-26 and 29-32 into two inventions is improper and should be withdrawn.

***The Examiner Has Failed To Provide Any Reason
For Restricting The Claimed Invention***

9. As noted above, there must be “a serious burden on the examiner if restriction is required.” (*See*, MPEP § 803.) This is a separate and distinct requirement that must be shown by the Examiner: “If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” (*See*, MPEP § 803.) In the above Restriction Requirement the Examiner has failed to provide any such showing. Further, Applicants respectfully assert that a search performed for any claim pending in the application contained in Groups II and IV would uncover references potentially relevant to other claims also contained in Groups II and IV. Accordingly, Applicants assert that this burden cannot be met and, for this additional reason, the requirement should be withdrawn.

10. For any one of the above reasons, Applicants respectfully assert that the Examiner has failed to provide a *prima facie* showing that the claims of Groups II and IV are properly subject to restriction. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the outstanding Restriction Requirement of these two groups of claims.

Provisional Election

11. In accordance with 37 CFR § 1.143 and MPEP 818.03(b), Applicants hereby provisionally elect, with traverse, the claims of Group I, namely, claims 18-26.

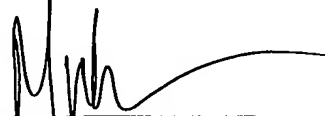
12. Applicants do not intend to dedicate non-elected claims to the public and reserve the right to file divisional applications for the subject matter covered by the non-elected claims.

13. The inventorship for the invention of the elected claims is the same as the inventorship of record in this application.

Conclusion

14. In view of the foregoing, it is respectfully submitted that this application is in condition for allowance and favorable action is respectfully solicited.

Respectfully submitted,



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Appendix

Drawing Sheet No. 5/6